IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 4484 OF 1995

Kotak Mahindra Bank Ltd. & Ors. ...Plaintiffs

Versus

M.F.V.SUMURATNA & Ors. ...Defendants

Mr. Birendra Saraf i/b. V.Deshpande & Co. for Plaintiffs 1 & 3.

Mr. N.R.Jagtap i/b. N. jagtap & Co. for Plaintiff No.2.

CORAM: S.K.SHAH,J.

DATE : 18th August,2005.

P.C.

1. The Suit is jointly filed by the SCICI i.e. Shipping Credit and Investment Company of India Limited, State Bank of India and Canara Bank for recovery of money from the Defendant No.2 Company which had borrowed from each of the three Banks by mortgaging the vessel - Defendant No.1. The suit was required to be filed as against the Defendant No.2 Company and Defendants Nos. 3, 4 and 5 who are

guarantors.

2. The original Plaintiff is SCICI. It merged with ICICI Ltd. and subsequently ICICI had assigned all its rights vis-a-vis the Defendants in favour of Kotak Mahindra Bank Ltd. Necessary amendments have been carried out and presently the Plaintiff No.1 is Kotak Mahindra Bank Ltd. The facts are that the Defendant No.2 had taken loan from Oriental Leasing Co. (OLL) to the extent of 412799,000 Japanese Yen and the same was guaranteed by Plaintiff No.2 and the Guarantee of Plaintiff No.2 was counter-guaranteed by Plaintiff Nos. 1 & 3. Plaintiff No.2 agreed if Plaintiff No.1 counter guarantees to the extent of 139,257,490 Japanse Yen and the Plaintiff No.3 for 136,770755 Japanese yen. Accordingly, Plaintiff No.2 executed a letter of Credit dated 26.9.1988 in favour of OOL to the extent of 412799,000 Japanese Yen (Exhibit "B"). Plaintiff No.1 issued counter guarantee dated 23.8.1988 in favour of Plaintiff No.2 for 139,257,490 Japanese Yen plus interest (Exhibit "C"). Plaintiff No.3 issued counter-guarantee dated 23.8.1988 for 136,770,755 Japanese yen plus interest (Exhibit "D'). Plaintiff Nos. 2 and 3 also provided Working Capital requirement to the Defendant No.2 of Rs.60 lakhs. Plaintiff No.1 guaranteed demand loan of Rs.7,60,000/- (equivalent to 5,475,166 Japanese yen) to the Defendant

No.2. In consideration, the Defendants Nos. 2,3, 4 and 5 executed a joint and several personal guarantees dated 14.6.1988 in favour of the Plaintiff No.1 (Exhibit "E'). Defendant No.2 created joint statutory first mortgage on Defendant No.1 on pari passu basis in favour of Plaintiffs Nos. 1,2 and 3 (exhibit "G). Defendant No.2 defaulted in payment of instalment to Oriental Leasing Co. and, therefore, Oriental Leasing Co. invoked guarantee of Plaintiff No.2, who in turn invoked counter-guarantee of Plaintiffs No. 1 and Plaintiff No.3. Thereupon, on request of Defendant No.2, Plaintiffs converted guarantee obligations and demand loan and interest upto 31.8.1992 into Rupee Loan payable in 25 instalments commencing from 15.1.1993 pursuant to which the Defendant No.2 executed three Rupee Loan Agreements dated 21.9.1992 with Plaintiff No.1 which are at Exhibit "F").

3. The above loan was secured by a joint statutory second mortgage, hypothecation of movable by unattested Deed of Hypothecation. The first charge in favour of the Plaintiffs and Plaintiff Nos. 2 and 3 had second charge for Working Capital Requirements. Personal Guarantees of Defendants Nos.3, 4 and 5 dated 21.9.1992. There was default in making payment of instalments due after August 1992 and also failed to make payment of Rupee Loan instalment and also amount

under loan of Plaintiff Nos. 2 and 3. Therefore, separate recall notices were issued to the Defendants Nos.2 to 5 who failed to reply and comply. Hence, the suit was filed for recovery of the amount due and enforce the security. 11 documents are produced along with a list of original documents and additional compilation of the original documents.

4. Affidavit of evidence of the Vice President of the Plaintiff No.1 is also filed. The claim is established by the Plaintiffs as per the per clauses of the plaint by the above facts as well as of the documentary evidence.

5. The Suit of the Plaintiffs is, therefore, decreed in terms of prayer clauses (b)(i), (ii), (iii), (c)(i), (ii), (iii), (iv), (d)(i), (ii), (iii) (iv), (e), (f), (g), (h), (i), (j), (k) and (l).

6. The learned Counsel for the Plaintiffs submits that the Defendant No.1-Vessel is on the verge of sinking and if sinking takes place, the Plaintiffs would be left with no property to recovery the money. He further submits that none of the Defendants Nos. 2 to 5 are present and therefore it is not likely that any recovery could be made. He, therefore, requests that decree in terms of prayer clause (m) should also

be granted.

7. The Court Receiver, High Court, Bombay, is hereby appointed in execution of the decree in terms of prayer clause (m), except the bracketed portion i.e."that pending the hearing and final disposal of the suit the Honourable Court be pleased to appoint the Court Receiver, High Court, Bombay or any other fit and proper person as a receiver".

Decree be drawn accordingly.

(S.K.SHAH,J.)